APPENDIX A

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
REGIONAL AND HOUSING MANAGEMENT

CIRCULAR

RHM 7431.1

7/14/70

Cancellation Date:

SUBJECT: Appointment of Tenants as Local Housing Authority Commissioners

1. PURPOSE. The Department of Housing and Urban Development wishes to encourage local communities to consider the appointment of tenants as commissioners of Local Housing Authorities to increase tenant participation in the management of low-income housing projects.

2. GENERAL.

a. The rapidly mounting desire by tenants of low-rent public housing to make their voices heard, to share in the decision-making process, and to achieve a feeling of belonging, and the sharp discrepancy between the background, interests, and socio-economic characteristics of present local housing authority commission members and those of the tenants whose welfare they are responsible for serving, argue strongly for local communities to give serious and immediate consideration to providing for tenant representation on the local housing authority's board of commissioners. While, under state law, the basic responsibility for determining local housing authority board composition rests with the responsible local elected officials, the Department believes there is great merit to this approach and hereby commends every community to give this its most serious and sympathetic consideration.

b. It is urged that when a tenant is selected for appointment as a Commissioner, every effort should be made to assure that he is generally acceptable to the tenants. However, there is no substitute for the appointment of thoughtful, intelligent and hard-working individuals to local housing authority boards who understand the many-faceted dimensions of the job and who are totally dedicated to serving the best interests of the program as a whole, including the interests of tenants.

Ltr. 7.C.1

3. WAIVER OF SECTION 515 OF THE ANNUAL CONTRIBUTIONS CONTRACT.

The General Counsel of the Department of Housing and Urban Development has ruled that a tenant serving as a local housing authority commissioner does not create a conflict of interest within the intent of Section 515 of the Annual Contributions Contract. However, if appropriate local housing authority officials have concern on this matter, then this notice constitutes the necessary Department of Housing and Urban Development Waiver of the conflict of interest provision of the ACC to enable tenants to serve as local housing authority commissioners, provided, further, that the tenant shall not participate in any decision affecting his individual interests as distinguished from the interests of tenants as a class.

HUD-Wash., D. C. • U. S. GOVERNMENT PRINTING OFFICE : 1970 O—376/99

APPENDIX B

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
RENEWAL AND HOUSING MANAGEMENT

CIRCULAR

RHM 7401.1

1/28/71

Cancellation Date:

SUBJECT: Appointment of Tenants as Local Housing Authority Commissioners - Section 211 of the Housing and Urban Development Act of 1970

1. PURPOSE. The purpose of this Circular is to supplement RHM 7401.1 and call to the attention of local communities the policy statement concerning the appointment of tenants as Local Housing Authority commissioners contained in Section 211 of the Housing and Urban Development Act of 1970.

2. GENERAL.

   a. Section 211 of the Housing and Urban Development Act of 1970 reads:

      "Section 1 of the United States Housing Act of 1937 is amended by adding at the end thereof the following: 'It is the sense of the Congress that no person should be barred from serving on the board of directors or similar governing body of a local public housing agency because of his tenancy in a low-rent housing project.'"

   b. The Department of Housing and Urban Development wishes to re-emphasize its strong commitment to the practice of appointing tenants to the Boards of Commissioners of Local Housing Authorities, as outlined in its Circular RHM 7401.1, dated 7/14/70. The declaration of the Congress in Section 211 complements the previously expressed policy of the Department.

   c. All Local Housing Authorities are urged to closely examine their own operating policies and relevant state laws, as appropriate, and to make or recommend changes in those policies and laws in order to remove barriers to tenant appointment as Local Housing Authority Commissioners.

APPENDIX C

STATE OF INDIANA

INDIANAPOLIS

OFFICES OF ATTORNEY GENERAL
THEODORE L. SENDAK, ATTORNEY GENERAL
219 STATE HOUSE
46204

November 17, 1969

Mr. D. R. Schaefer
Assistant Attorney General
c/o Community Affairs
1179 Main Street
Hartford, Connecticut 06101

Dear Mr. Schaefer:

This office is in receipt of your request for information on the question of whether a tenant of a housing authority can serve as a Commissioner of that authority.

I have been unable to find any Indiana court decisions or Attorney General Opinions, whether official or unofficial, on this subject.

The reason for lack of such decisions might be the fact that Sec. 10 of the 1937 Indiana Housing Authority Act (which the compiler of the unofficial Burns' Indiana Statutes Annotated considers comparative legislation to Connecticut's general statutes of 1958, Sec. 8-38 et seq.) appears to specifically exclude Commissioners as tenants. A copy of that Statute, Burns' Sec. 48-8110, is enclosed.

Please advise if you wish further information.

Sincerely,

John T. Carmody
Deputy Attorney General

JTC/ssc

enc.

48-8110. Rentals and tenant selection.—In the operation or management of housing projects a housing authority shall at all times observe

the following duties with respect to rentals and tenant selection: (a) It shall not accept any person as a tenant in any dwelling in a housing project if the persons who would occupy the dwelling have an aggregate annual income which equals or exceeds the amount which the authority determines, which determination shall be conclusive, to be necessary in order to enable such persons to secure safe, sanitary and uncongested dwelling accommodations within the area of operation of the authority and to provide an adequate standard of living for themselves.

(b) It may rent or lease the dwelling accommodations therein only at rentals within the financial reach of persons who lack the amount of income which it determines, pursuant to (a) of this section, to be necessary in order to obtain safe, sanitary and uncongested dwelling accommodations within the area of operation of the authority and to provide an adequate standard of living.

(c) It may rent or lease to a tenant a dwelling consisting of the number of rooms, but no greater number which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding.

The housing authority shall promulgate rules specifically indicating the manner in which it shall exercise its powers and perform its duties under this section, which rules shall be applicable equally to all tenants and shall be posted for public inspection in a conspicuous place in the office of the housing authority.

No employee, officer or member of a housing authority except the resident manager and one [1] maintenance employee for each one hundred and fifty [150] families or major fraction thereof, and no holder of any public office or appointment shall be eligible as a tenant. Nor shall employees of the United States, the state of Indiana or any political subdivision or agency thereof constitute collectively more than ten per cent [10%] of the tenants in any housing project: Provided, however, That service in the armed forces of the United States, receipt of public assistant [assistance] from the county welfare department, receipt of direct relief, or service under work relief projects shall not be construed as employment, office or appointment in applying this paragraph.

Nothing contained in this or the preceding section shall be construed as limiting the power of an authority to vest in any obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof or acquire title thereto through foreclosure proceedings, free from all the restrictions imposed by this or the preceding section. [Acts 1937, ch. 207, § 10, p. 1034; 1947, ch. 374, § 5, p. 1494; 1961, ch. 174, § 1, p. 388.]

Compiler's Note. Bracketed word "assistance" inserted by compiler.

Title of Amendatory Act. The title of Acts 1961, ch. 174, reads: "An act to amend the law which created public bodies corporate and politic to be known as housing authorities as such law relates to those eligible to be tenants in housing projects, being Acts 1937, c. 207 as last amended by Acts 1947, c. 374."

Amendments. The 1947 amendment, in subsection (a) substituted commas for parentheses beginning with the word "which" and ending with "conclusive." In subsection (b) it substituted commas for parentheses beginning with the word "pursuant" and ending with "section." In subsection (c) it made like substitution, beginning with the word "but" and ending with "number." The fourth and fifth paragraphs were added.

The 1961 amendment in the first and second sentences of the third paragraph of subsection (c) substituted "holder of any public office or appointment shall be eligible as a tenant. Nor shall employees of the United States, the state of Indiana or any political subdivision or agency thereof constitute collectively more than ten per cent of the tenants in any housing project:" for "employee of any local, state or federal govern-

APPENDIX D

STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY, N. Y. 12224

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL

Telephone: 474-6662

November 13, 1969

Hon. D. R. Schaefer
Assistant Attorney General
c/o Community Affairs
1179 Main Street
Hartford, Connecticut 06101

Dear Sir:

This is in response to your letter of November 6, 1969, wherein you request copies of any opinions issued by this office on the question as to whether a tenant of a housing authority can serve as a Commissioner of that authority. I enclose herewith a copy of 1967 Op. Atty. Gen. (Inf.) May 18, 95.

Since that opinion, Public Housing Law § 30 was amended by L. 1969, c. 488, eff. May 10, 1969 by adding a new subdivision 5 to § 30 which reads as follows:

> "5. Not more than one member of an authority may be a tenant thereof at any one time. Any such appointment shall comply with the provisions of subdivision two of this section. Acceptance or retention of such appointment shall not be deemed incompatible with, or a forfeiture of such tenancy, provided however, that such member shall cease to serve as such upon termination of his tenancy for any reason, or upon his becoming subject to removal from occupancy due to the operation of section one hundred fifty-six of this chapter; and provided that any compensation paid to such member for his services to an authority shall not affect his eligibility for membership on such

authority or for continued occupancy, but may be used in the determination of his rent." (Emphasis supplied)

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By:

CARL J. RUSKOWSKI
Assistant Attorney General

Enc.

PUBLIC HOUSING LAW §§ 3(2)(14)(20), 36; GENERAL MUNICIPAL LAW §§ 801, 802(1-h).

A member appointed to a municipal housing authority who is a tenant in a project under a lease entered into with the authority prior to his appointment, with full disclosure by him of such lease given to the authority before his appointment, may continue as a member of the authority and a tenant in the project during the duration of the lease, provided there be no renewal of such lease.

May 18, 1967

Stephen R. J. Roach, Jr., Esq.
Attorney for Tuckahoe Housing Authority
2074 Crompond Road
Yorktown Heights, New York 10598

Dear Sir:

In your letter of May 9, 1967 you asked the following question:

> "May a tenant residing in the Project of the Tuckahoe Housing Authority, who holds such tenancy under a written lease be, at the same time he is a tenant, a member of the Authority; and may he continue to sit as a member of the Authority while at the same time continuing to be a resident in the Project?"

I understand that the member of the Authority was a tenant under written lease in the project prior to his appointment.

Public Housing Law § 36 provides:

> "No member or employee of an authority shall acquire any interest direct or indirect in a project or in any property then or thereafter included or planned to be included in a project, nor retain any interest direct or indirect in any property acquired subsequently to his appointment or employment which is later included or to his knowledge planned to be included in a project." (Emphasis supplied.)

The above section also provides that if such interest in the property or project was acquired prior to appointment of such member or employee, he shall disclose such interest

(over)

d date of acquisition in writing to the authority also prior his appointment. I assume such disclosure was made in this stance.

Under Public Housing Law § 3(14), the term "project" cludes "lands, buildings and improvements * * * to provide elling accommodations for persons of low income", and under 3(20) the terms "real property" or "property" include "lands d improvements, * * * and any and all easements, franchises d hereditaments, corporeal or incorporeal, and every estate, terest and right therein". (Emphasis supplied.) In Kayser rporation v. Fosterport Realty Corporation, 1 M. 2d 489 (Sup. ., Bronx Co., 1947), affd. 272 App. Div. 878, the Court stated substance that a lease transfers an interest in a designated rtion of land, whereby the landlord yields up the exclusive ssession of such designated portion of land for a specified rm for all purposes not prohibited by express agreement, while Goulang Realty Company, Inc. v. Dyer, 138 N. Y. S. 2d 817 un. Ct. of the City of New York, Borough of Bronx, 2d Dist., 954), affd. 138 N. Y. S. 2d 826 (Sup. Ct., App. T., 1st Dept.), e Court quoted with favor Mr. Justice Brisach in Russbaum v. rstaff Realty Co., Inc. (Sup. Ct., Bronx Co., 1950), 197 Misc. 27, 528, 96 N. Y. S. 2d 161, 163, who stated:

> "A lease is a contract between a landlord and a tenant for the occupation of real property and contains clauses for the protection of both and terminates upon a definite day agreed upon by all parties."

It appears under Public Housing Law § 36 that a member f a municipal housing authority would be disqualified from mbership on such authority if he acquired or retained a lease r tenancy in the project consummated after his appointment. e section would require a member, prior to his appointment, to isclose to the authority the existence of such lease which had en entered into prior thereto, but is silent as to his disualification after such disclosure followed by his appointment.

General Municipal Law § 801 prohibits interests in ertain contracts with municipalities and certain public agencies y their employees and officers, but does not cover under its rovisions a municipal housing authority which, under Public ousing Law § 3(2), is "a public corporation which is a corporate overnmental agency". General Municipal Law § 802(1-h) makes an xception in its conflicts of interest prohibitions in a case here a contract with such municipality or public agency, in

Which an officer or employee has an interest, was entered into prior to the time he was elected or appointed, but in no event authorizes a renewal of such contract.

My predecessor, in 1951 Atty. Gen. 109, stated as follows:

> "Although various statutes proscribe a municipal officer's having a personal interest in a contract with his municipality, the courts have stated that these statutory provisions are merely declaratory of the common law rule. Matter of Clarke v. Town of Russia, 283 N. Y. 272, 274; Matter of Black, 234 App. Div. 7). * * * I feel that, in consonance with the spirit of the common law, a member of a housing authority should be held to the same standard of conduct as that of a municipal officer."

From the foregoing, I conclude that a member appointed to a municipal housing authority who is a tenant in a project under a lease entered into with the authority prior to his appointment, with full disclosure by him of such lease given to the authority before his appointment, may continue as a member of the authority and a tenant during the duration of the lease, provided there be no renewal of such lease. However, public policy would dictate that the appointment of a tenant in a project to membership on a municipal housing authority having jurisdiction over such project should be avoided.

The Attorney General is authorized to render formal and official opinions to officers and departments of the State government only. Necessarily, therefore, the foregoing is not to be considered a formal opinion of the Attorney General, but is an informal and unofficial expression of view given with the desire to be helpful to you.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By

CARL J. RUSKOWSKI
Assistant Attorney General

CJR:AMM

and date of acquisition in writing to the authority also prior to his appointment. I assume such disclosure was made in this instance.

Under Public Housing Law § 3(14), the term "project" includes "lands, buildings and improvements * * * to provide dwelling accommodations for persons of low income", and under § 3(20) the terms "real property" or "property" include "lands and improvements, * * * and any and all easements, franchises and hereditaments, corporeal or incorporeal, and every estate, interest and right therein". (Emphasis supplied.) In Kaypar Corporation v. Fosterport Realty Corporation, 1 M. 2d 469 (Sup. Ct., Bronx Co., 1947), affd. 272 App. Div. 878, the Court stated in substance that a lease transfers an interest in a designated portion of land, whereby the landlord yields up the exclusive possession of such designated portion of land for a specified term for all purposes not prohibited by express agreement, while in Gaulang Realty Company, Inc. v. Dyer, 138 N. Y. S. 2d 817 (Mun. Ct. of the City of New York, Borough of Bronx, 2d Dist., 1954), affd. 138 N. Y. S. 2d 826 (Sup. Ct., App. T., 1st Dept.), the Court quoted with favor Mr. Justice Brisach in Nussbaum v. Garstaff Realty Co., Inc. (Sup. Ct., Bronx Co., 1950), 197 Misc. 527, 528, 96 N. Y. S. 2d 161, 163, who stated:

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It appears under Public Housing Law § 36 that a member of a municipal housing authority would be disqualified from membership on such authority if he acquired or retained a lease for tenancy in the project consummated after his appointment. The section would require a member, prior to his appointment, to disclose to the authority the existence of such lease which had been entered into prior thereto, but is silent as to his disqualification after such disclosure followed by his appointment.

General Municipal Law § 801 prohibits interests in certain contracts with municipalities and certain public agencies by their employees and officers, but does not cover under its provisions a municipal housing authority which, under Public Housing Law § 3(2), is "a public corporation which is a corporate governmental agency". General Municipal Law § 802(1-h) makes an exception in its conflicts of interest prohibitions in a case where a contract with such municipality or public agency, in

which an officer or employee has an interest, was entered into prior to the time he was elected or appointed, but in no event authorizes a renewal of such contract.

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The Attorney General is authorized to render formal and official opinions to officers and departments of the State government only. Necessarily, therefore, the foregoing is not to be considered a formal opinion of the Attorney General, but is an informal and unofficial expression of view given with the desire to be helpful to you.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By

CARL J. RUSKOWSKI
Assistant Attorney General

CJR:ANM

APPENDIX E

APPROVED IN CONFERENCE!

19 December 1968

SUBJECT: Housing Authorities; Tenant in Housing Authority Disqualified to be a Commissioner Thereof.

Mr. Daniel K. Edwards
Attorney at Law
111 Corcoran Street
Durham, North Carolina 27702

Dear Mr. Edwards:

In your letter of December 13, 1968, you request an opinion as to whether a tenant in a Housing Authority would be disqualified to hold office as a Commissioner of the Authority. You state that the tenants lease the dwelling units from the Authority and enter into a written lease for a term of years specifying rents and other obligations of the landlord and tenant.

We are of the opinion that GS 157-7 and GS 14-234 would prohibit a tenant serving as a Commissioner of the Housing Authority.

With kind regards and best wishes for the Holiday Season, I am

Yours very truly,

T. W. BRUTON
Attorney General

James F. Bullock
Deputy Attorney General

JFB:fg